Supreme Court, U.S.
FILED

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No. _____ OFFICE OF THE CLERK

In The

Supreme Court of the United States

JOSEPH WAYNE BULLOCK,

Petitioner,

versus

STATE OF MISSISSIPPI,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Mississippi

PETITION FOR WRIT OF CERTIORARI

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37 pg

QUESTION PRESENTED

1. Whether Petitioner's sentence to life imprisonment without possibility of parole as a habitual offender constitutes a violation of the *ex post facto* clause?

PARTIES TO THE PROCEEDING

In addition to Petitioner, Joseph Wayne Bullock, the other parties below included his co-defendant, Thomas Jerome Bullock, now deceased, and the State of Mississippi, Respondent and Appellee below.

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PETITION FOR WRIT OF CERTIORARI

Joseph Wayne Bullock, the Petitioner in the above-captioned case, respectfully prays that a Writ of Certiorari issue to review the opinion and order of the Mississippi Supreme Court entered on March 22, 2002.

OPINIONS BELOW

The Order of the Mississippi Supreme Court was filed on March 22, 2002, and captioned Joseph Wayne Bullock v. State of Mississippi, Mississippi Supreme Court, No. 2001-M-01695. A copy of the Mississippi Supreme Court's Order appears herein at Appendix 1. The Order was signed by Chuck Easley, Justice of the Mississippi Supreme Court.

JURISDICTION

The Order sought to be reviewed is the Order rendered by the Mississippi Supreme Court on March 22, 2002. The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION

The constitutional provision involved in this case is as follows:

Article I, Section 10 provides that "No State shall . . . pass any Bill of Attainder, *ex post facto* Law."

STATEMENT OF THE CASE AND FACTS

A. Procedural History

Petitioner, Joseph Wayne Bullock, was found guilty of Kidnaping and sentenced as a habitual offender in the Circuit Court of Jackson County, Mississippi. The guilty verdict was returned by the jury on February 4, 1987, and a sentencing hearing was held on February 5, 1987. Bullock was sentenced to life imprisonment without the possibility of parole as a habitual offender (App. 4-5).

Bullock's judgment of conviction and sentence were affirmed by the Supreme Court of Mississippi on September 13, 1989, in an opinion not designated for publication, No. 07-58581 (App. 6-7). Following his conviction or affirmance on appeal, Petitioner, along with his co-defendant, Thomas Jerome Bullock, now deceased, filed numerous petitions for post-conviction relief. Those motions were consistently denied by the Mississippi Supreme Court. See Mississippi Supreme Court Case, No. 90-M-277, a series of decisions rendered on April 8, 1992 (App. 8-9), Order of Mississippi Supreme Court, No. 1999-M-01613, dated April 21, 2000 (App. 10-11), Order of Mississippi Supreme Court No. 2000-M-01276, dated March 11, 2002 (App. 12-13).

Petitioner filed Application for Post-Conviction Relief or, in the alternative, Motion to Correct Judgment

and Sentence in the Circuit Court on October 30, 2001.[1] None of Mr. Bullock's earlier petitions had addressed the issue of whether or not his sentence as a habitual offender constituted an *ex post facto* violation. In his October, 2001 Application, Mr. Bullock raised the limited, but precise, issue as to whether or not his sentence to life imprisonment without the possibility of parole as a habitual offender constitutes an *ex post facto* violation. That was the only issue before the Mississippi Supreme Court and it remains the only issue before this Honorable Court. The Mississippi Supreme Court denied Bullock's application for post-conviction relief in an order filed March 22, 2002 (App. 1).[2] Bullock seeks a Writ of Certiorari to review that Order.

B. Statement of the Facts

The facts necessary to Petitioner's Application for Post-Conviction Collateral Relief, as well as his present Petition for Certiorari are limited. They are also undisputed. Those facts include Petitioner's conviction and sentence as a habitual offender. The Indictment alleged

---

[1] Mississippi Uniform Post-Conviction Collateral Relief Act, Section 99-39-1, *et seq.*, Mississippi Code of 1972, as amended.

[2] The Mississippi Supreme Court did not raise any procedural bars in its Order dismissing Mr. Bullock's application. Under Mississippi cases, errors effecting fundamental constitutional rights are excepted from procedural bars such as the three (3) year limitation period (Section 99-39-5(2)) and the bar against filing successive petitions (Section 99-39-23)(6)). *Luckett v. State*, 582 So.2d 428, 430 (Miss. 1991); *Ivy v. State*, 731 So.2d 601 (Miss. 1999).

that Petitioner had been convicted of the following offenses:

> 1) Rape, 1973, in the Circuit Court of George County, Mississippi, with a sentence of three (3) years in the custody of the Mississippi State Penitentiary;
>
> 2) Grand Larceny, 1972, in the Circuit Court of George County, Mississippi, with a sentence of three (3) years in the Mississippi State Penitentiary; and
>
> 3) Grand Larceny, 1979, in the Circuit Court of George County, Mississippi, with a sentence of three (3) years in the Mississippi Department of Corrections (App. 2-3).

For the purposes of this Petition, as well as the underlying Petition, Mr. Bullock does not challenge the evidentiary basis used by the State in introducing and proving the above convictions. Again, the only issue is the *ex post facto* issue.

Petitioner was sentenced as a habitual offender under Sections 99-19-81 and 99-19-83 of the Mississippi Code of 1972, as amended. These provisions came into effect on January 1, 1977. However, two (2) of the above prior convictions on which the State relied in order to sentence the Petitioner as a habitual offender occurred prior to the enactment of Sections 99-19-81 and 99-19-83.

REASONS FOR GRANTING THE WRIT

Petitioner was sentenced under both of Mississippi's habitual offender statutes, Sections 99-19-81 and 99-19-83 of the Mississippi Code of 1972, as amended (App. 4-5).

Section 99-19-81 provides as follows:

> "Every person convicted in this state of a felony who shall have been convicted twice previously of any felony or federal crime upon charges separately brought and arising out of separate incidents at different times and who shall have been sentenced to separate terms of one (1) year or more in any state and/or federal penal institution, whether in this state or elsewhere, shall be sentenced to the maximum term of imprisonment prescribed for such felony, and such sentence shall not be reduced or suspended nor shall such person be eligible for parole or probation."

Section 99-19-83 provides as follows:

> "Every person convicted in this state of a felony who shall have been convicted twice previously of any felony or federal crime upon charges separately brought and arising out of separate incidents at different times and who shall have been sentenced to and served separate terms of one (1) year or more in any state and/or federal penal institution, whether in this state or elsewhere, and where any one (1) of such felonies shall have been a crime of violence shall be sentenced to life imprisonment, and such sentence shall not be reduced or suspended nor shall such person be eligible for parole or probation."

Neither of the above statutes needs to be abrogated in order to grant Petitioner relief in this case. While neither statute limits prior convictions to the effective date of the statute or thereafter, by granting Petitioner relief and finding that his sentence constituted an *ex post facto* violation because of the consideration of his 1972 and 1973 convictions, the above statutes will remain fully in effect, but limited to convictions as of January 1, 1977, or thereafter. This result would be in keeping with the longstanding doctrine of preserving a statute if it can be given a constitutional interpretation. See *Washington Airport's Authority v. Citizens for Abatement of AirCraft Noise, Inc.*, 501 U.S. 252, 115 L.Ed.2d 236, 111 S.Ct. 2298 (1991); *Rust v. Sullivan*, 500 U.S. 173, 114 L.Ed.2d 233, 111 S.Ct. 1759 (1991).

This Honorable Court established its present test for determining whether criminal enactments violate *ex post facto* guarantees in *Collins v. Youngblood*, 497 U.S. 37, 111 L.Ed.2d 30, 110 S.Ct. 2715 (1990). Criticizing prior jurisprudence which attempted to distinguish between "procedural" changes as opposed to changes effecting "matters of substance," the Court in *Collins* stated that one or more of the following must be found in order for a statute to constitute an *ex post facto* violation:

> " . . . punish as a crime an act previously committed, which was innocent when done; . . . make more burdensome the punishment for a crime, after its commission; . . . deprive one charged with crime of any defense available according to law at the time when the act was committed." (497 U.S. at 52).

By reaching back to crimes which Mr. Bullock committed prior to January, 1977, specifically crimes which occurred in 1972 and 1973, the sentencing court in this case has clearly made more burdensome the punishment for those crimes after their commission.

This Honorable Court has not had occasion to consider the *ex post facto* implications of the Mississippi habitual offender statutes.

Prior to *Collins v. Youngblood*, the plaintiff in *Perkins v. Cabanna*, 794 F.2d 168 (5th Cir. 1986), *cert. den.*, 479 U.S. 936, 107 S.Ct. 414, 93 L.Ed.2d 366 (1986), challenged Section 99-19-81 under the *ex post facto* clause. Mr. Perkins asserted that the law impermissibly applies to convictions that occurred prior to the enactment of the statute. The Court of Appeals rejected Mr. Perkins' argument. Without citation of any cases, the Fifth Circuit held that the statute does not punish or increase the punishment for past offenses, but classifies felony recidivists in a different category for punishment purposes because of their past offenses. *Perkins* at 169. This Court denied certiorari.

Petitioner now submits that this is an opportune time for the Court to grant certiorari, in order to determine whether or not the use of crimes which were committed prior to the enactment of the habitual offender statutes constitutes an *ex post facto* violation. The semantics employed by the Fifth Circuit in *Perkins* carry little, if any, weight after *Collins v. Youngblood*. The use of Petitioner's 1972 and 1973 convictions in this case made more burdensome the punishment for those crimes after their commission. The 1972 and 1973 three (3) year sentences have

been converted into life sentences without eligibility for parole.

Petitioner would further submit that the circumstances in this case are very different from those in which the Court has found no *ex post facto* violations despite enactment of new legislation or regulations which, on their face, had some impact on the case in question, specifically *Collins v. Youngblood* itself, *California Department of Corrections v. Morales*, 514 U.S. 499, 131 L.Ed.2d 588, 115 S.Ct. 1597 (1995) and *Garner v. Jones*, 529 U.S. 244, 146 L.Ed.2d 236, 120 S.Ct. 1352 (2000).

In *Collins v. Youngblood, supra*, this Court found that the new Texas statute which allowed reformation of a jury verdict assessing an unauthorized punishment was not an *ex post facto* violation. The Court found that the statute, which had resulted in the deletion of a ten thousand dollar ($10,000.00) fine, did not punish as a crime an act previously committed which was innocent when done, did not make more burdensome the punishment for a crime after its commission, and did not deprive the defendant of any defense available according to law at the time the act was committed. The fact of the matter is that in *Collins v. Youngblood* the defendant's punishment had not been increased, but actually decreased.

Unlike *Collins v. Youngblood*, Mr. Bullock's sentence was increased as a result of the 1977 habitual offender statutes.

In *Morales*, this Court held that a California statute which allowed the California Board of Parole to defer parole hearings for up to three (3) years for a prisoner convicted of more than one (1) offense involving the

taking of a life, as applied to prisoners who committed their crimes before the enactment of the statute, did not constitute a violation of the *ex post facto* clause. In rejecting the *ex post facto* argument in *Morales*, the Court relied on several factors: i.e., both before and after the 1981 amendment, California punished the offense of second-degree murder with an indeterminent sentence of confinement in the state prison for a term of fifteen (15) years to life; the amendment left unchanged the substantiative formula for securing any reductions to this sentencing range; the amendment had no effect on the standards for fixing a prisoner's initial date of eligibility for parole or for determining his suitability for parole and setting his release date.

The only change affected by the statute in question in *Morales* was the frequency of mandated parole hearings, changing the requirement that parole hearings be held every year to once every three (3) years. In addition, the amendment only applied to those prisoners who had been convicted of "more than one offense which involves the taking of a life." *Morales*, 131 L.Ed.2d at 597. Thus, the amendment applies only to a class of prisoners for whom the likelihood of release on parole is quite remote. The Court also focused on the fact that the Parole Board is not required to defer parole hearings and is able to tailor "the frequency of subsequent suitability hearings to the particular circumstances of the individual prisoner." *Morales*, 131 L.Ed.2d at 598.

These factors are startlingly different than the circumstances in this case where Mr. Bullock received a sentence of life without parole, based not only on his

current kidnaping conviction, but also on his two (2) pre-1977 convictions.

This Court's decision in *Garner v. Jones* flows directly out of *Morales*. In *Garner*, the Court reversed the Eleventh Circuit and held that the Georgia Parole Board's amendment of its rule so as to lengthen the time between parole reconsideration hearings from three (3) years to eight (8) years did not violate the *ex post facto* clause. Again, the Board retains discretion to shorten the interval, but declined to do so in the particular case at hand where the defendant had been sentenced to two (2) separate life sentences for murder. The Court stated that the test to determine whether or not there has been an *ex post facto* violation is whether there is sufficient risk of increasing the measure of punishment attached to the covered crime. The Court concluded that given Mr. Garner's criminal history, it was difficult to see how the Board increased his risk of serving a longer time when it was set at an eight (8) year, not a three (3) year interval. The Court stated that when the rule does not by its own term show a significant risk, the defendant must demonstrate by evidence drawn from the rule's practical implementation by the agency charged with exercising discretion, that its retroactive application will result in a longer period of incarceration than under the earlier rule. Finally, this Court held that in *Garner*, the defendant did not meet that burden.

Unlike the circumstances in *Garner*, here, the issue goes beyond a significantly increased risk of greater punishment. Here, Defendant could not have received a life sentence without parole if the sentencing court had not implemented or used his 1972 and 1973 convictions. In

this case, the defendant's punishment for his 1972 and 1973 convictions was, in fact, increased based on legislation which was enacted subsequent to those convictions. Had Mr. Bullock not been sentenced as a habitual offender, under the law existing at the time of his sentence, he would have been eligible for parole consideration after serving ten (10) years of his sentence. See § 47-7-3(1), Mississippi Code of 1972, as amended. Since Mr. Bullock has served more than ten (10) years of his sentence, if his status as a habitual offender is removed, he would be immediately eligible for parole consideration.

The use of Mr. Bullock's pre-1977 convictions in this case is comparable to the statutory changes found to be *ex post facto* violations in *Lindsey v. Washington*, 301 U.S. 397, 81 L.Ed. 1182, 575 S.Ct. 797 (1937), *Miller v. Florida*, 482 U.S. 423, 96 L.Ed.2d 351, 107 S.Ct. 2446 (1987), and *Weaver v. Graham*, 450 U.S. 24, 67 L.Ed.2d 17, 101 S.Ct. 960 (1981).

In *Lindsey*, after commission of the crime and defendants' conviction, the Florida statute regarding Grand Larceny was changed from providing for a maximum sentence of not more than fifteen (15) years for a mandatory fifteen (15) year sentence. Because this change made more burdensome the punishment for a crime after its commission, this Court found an *ex post facto* violation.

In *Weaver*, this Court found that a statute which retroactively reduced the amount of "gain time" or "good time" credits available to prisoners was a violation of the *ex post facto* clause. Again, in *Weaver*, the actual parameters of punishment were changed after commission of the crime and the defendant's initial sentence.

In *Miller*, a Florida statute which increased the sentencing range for certain sexual offenses after the petitioner's conviction, but before his sentencing, was again found to be a violation of the *ex post facto* clause.

Lindsey, Weaver and *Miller* are important, because in each case there was a change which adversely effected the defendant's sentence resulting in an increase in that sentence. Likewise, Mississippi's habitual offender statutes which went into effect on January 1, 1977, adversely and effectively increased Joseph Bullock's sentences for his 1972 and 1973 convictions.

CONCLUSION

Without inclusion of his 1972 and 1973 convictions, Petitioner Bullock could not have received a life sentence without the possibility of parole or pardon as a habitual offender when he was sentenced in 1987.

In 1972, Mr. Bullock received a three (3) year sentence for Grand Larceny. The maximum penalty was five (5) years. See § 97-17-41[3] of the Mississippi Code of 1972, as amended.

In 1973, Mr. Bullock received a three (3) year sentence for Rape. A jury could have imposed a life sentence, but Mr. Bullock was sentenced by the Court which had no

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[3] The provision of Section 97-17-41 in effect in 1972 is set forth at Appendix 14.

authority to impose a life sentence. See § 97-3-65(2)[4] of the Mississippi Code of 1972, as amended. Even if he had received a life sentence, he would have been eligible for parole after ten (10) years. See § 47-7-3.[5] At that time, he could not have received a sentence of life without the possibility of parole. The present statute which prohibits early release for an inmate who receives a life sentence or is convicted of a sex crime did not go into effect until June 30, 1995. See § 47-5-139.[6]

In 1972 and 1973, Mr. Bullock could not have received a sentence without eligibility for parole for either Grand Larceny or Rape.

Conversely, when Mr. Bullock was convicted of Kidnaping in 1987, the jury was authorized and did, in fact, sentence Mr. Bullock to a life sentence. But, without inclusion of the 1972 and 1973 convictions, he could not have received a sentence of life without the possibility of parole. Again, Section 47-5-139 did not go into effect until 1995.

In this case, the inclusion of Mr. Bullock's 1972 and 1973 convictions in his 1987 sentence made more burdensome the punishment for his 1972 and 1973 crimes –

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[4] The provision of Section 97-3-65(2) in effect in 1973 is set forth at Appendix 14-15.

[5] The provision of Section 47-7-3 in effect in 1972 and 1973 is set forth at Appendix 15-16.

[6] Section 47-5-139, effective July 30, 1995, is set forth at Appendix 15-16.

based on a statute that did not go into effect until January, 1977. This is indeed an *ex post facto* violation.

Respectfully submitted,

JOSEPH WAYNE BULLOCK,
Petitioner

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Serial: 94605

IN THE SUPREME COURT OF MISSISSIPPI

No. 2001-M-01695

JOSEPH WAYNE BULLOCK

v.

STATE OF MISSISSIPPI

ORDER

(Filed Mar. 22, 2002)

This matter came before a panel of this Court consisting of Smith, P.J., Waller and Easley, JJ., on the application for leave to seek post-conviction relief filed by Bullock. The panel finds that Bullock's reliance on *Bell v. State*, 726 So.2d 93 (Miss. 1998) is misplaced and that the application fails to present a substantial showing of the denial of a state or federal right as required by Miss Code Ann. § 99-39-27(5).

IT IS THEREFORE ORDERED that the application for leave to seek post-conviction relief is hereby denied.

SO ORDERED, this the 21st day of March, 2002.

/s/ Chuck Easley, J
CHUCK EASLEY, JUSTICE

INDICTMENT Form 6 – A TRUE BILL
KIDNAPPING – HABITUAL OFFENDER

THE STATE OF MISSISSIPPI	)	In the Circuit Court in and for said County at the APRIL Term thereof, in the year of our Lord, 1986.
Jackson County	)	

THE GRAND JURORS of the State of Mississippi, taken from the body of the good and lawful Jurors of said County, duly elected, empaneled, sworn and charged, at the Term aforesaid of the Court aforesaid, to inquire in and for the body of the County aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present: That JOSEPH WAYNE BULLOCK and THOMAS JEROME BULLOCK late of the County aforesaid, on the 8th day of February in the year of our Lord 1986, in the County aforesaid, did unlawfully, wilfully and feloniously and without authority of law, forcibly seize, inveigle or kidnap and secretly confine Denise Mumma, against her will and without the consent of the said Denise Mumma,

(Continued to Page 2 and made a part hereof)

At a time when he, the said Joseph Wayne Bullock, had previously been convicted of the following felonious crimes, to-wit:

(1) In the Circuit Court of George County, Mississippi, for the crime of Rape, and was sentenced on March 1, 1973, to serve a term of Three (3) Years in the Mississippi State Penitentiary in Cause Number 1644;

(2) In the Circuit Court of George County, Mississippi, for the crime of Grand Larceny, and was sentenced on

May 29, 1972, to serve a term of Three (3) Years in the Mississippi State Penitentiary in Cause Number 1627;

(3) In the Circuit Court of George County, Mississippi, for the crime of Grand Larceny, and was sentenced on July 26, 1979, to serve a term of Three (3) Years in the Mississippi Department of Corrections in Cause Number 1877,

In violation of Section 99-19-81 of the Mississippi Code of 1972 Annotated, as amended, and under which section the State of Mississippi intends to seek the maximum punishment for the crime of Kidnapping, which is LIFE in the Mississippi Department of Corrections without parole,

(Continued to Page 3 and made a part hereof)

/s/ [Illegible]
Foreman of the Grand Jury

/s/ Michael C. Moore
District Attorney

STATE OF MISSISSIPPI

VS. No. 86-10,191 **"Jury Trial – Criminal Case"**

THOMAS J. BULLOCK and

JOSEPH W. BULLOCK

Comes the District Attorney who prosecutes the pleas for the State of Mississippi and comes Defendant, who was brought before the Court, being accompanied by their counsel, who having been arraigned in open Court and in presence of counsel on a former day of this Term of Court upon the indictment preferred against them herein of "Kidnapping-Habitual offender" and having plead NOT GUILTY to said charge and says that they are ~~is~~ NOT GUILTY. Thereupon came a jury composed of Henrietta D. Swanzy and eleven other good and lawful jurors of Jackson County, who were empaneled, accepted by both the State and Defendant, who were duly sworn according to law, and after hearing all of the evidence, argument of counsel and received the instructions of the Court, retired to consider their verdict, being in charge of sworn officers of the law, and presently returned into open Court and in the presence and hearing of Defendant and his Counsel, the following verdict towit:

"We, the Jury, find the Defendants, Thomas J. Bullock and Joseph W. Bullock, guilty as charged, and fix their punishment at life imprisonment."

Thereupon said defendant was placed at the bar of the Court for sentence and was asked by the Court if they had anything to say why the sentence of the law shall not be pronounced against them herein, and saying naught. It is thereupon considered and ordered by the Court that

said defendant Thomas J. Bullock and Joseph W. Bullock for such their offense of Kidnapping-Habitual Offender be and they are ~~is~~ hereby sentenced ~~to~~ as Habitual Criminals, under Section 99-19-81 and 99-19-83 of the Mississippi Code of 1972, to be imprisoned in the custody of the Mississippi Department of Corrections to Life without parole and such sentence shall not be reduced or suspended, nor shall they be eligible for parole or probation.

---

date of sentence to commence from today, and that they pay all costs accrued in that prosecution and that defendant s are to be remanded into the custody of the Sheriff until such time they may be transported to the Mississippi Department of Corrections, Parchman, MS

Ordered this the 5th day of February A.D., 1987.

Darwin M. Maples
Circuit Court Judge

FILED
5th Day of February, 1987
JOE W. MARTIN, JR., Clerk
By: /s/ Linda Lang D.C.

IN THE SUPREME COURT OF MISSISSIPPI

NO. 07-58581

JOSEPH WAYNE BULLOCK and
THOMAS JEROME BULLOCK

v.

STATE OF MISSISSIPPI

NOT DESIGNATED FOR PUBLICATION

TRIAL JUDGE:
Darwin M. Maples

COURT FROM WHICH APPEALED:
Circuit Court, Jackson County

ATTORNEY FOR APPELLANTS:
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Pascagoula, MS 39567

ATTORNEY FOR APPELLEE:
Mike Moore, Atty. Gen.
By: John R. Henry
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NATURE OF CASE:
Criminal

DISPOSITION:
Affirm.

(Filed Sep. 13, 1989)

BEFORE ROY NOBLE LEE, C.J., ANDERSON and BLASS, JJ.

BLASS, JUSTICE, FOR THE COURT:

Joseph Wayne Bullock and Thomas Jerome Bullock were indicted for the crime of kidnapping – habitual offender. They were tried by a jury on February 4, 1987, and convicted. A sentencing hearing was held on February 5, 1987, in which both were sentenced to life imprisonment without the possibility of pardon or parole.

After a review of the record and briefs in this case, we find no merit under any error assigned on appeal and affirm the conviction and sentence. *See Burkett v. State*, 484 So.2d 1046 (Miss. 1986); *Smith v. State*, 484 So.2d 364 (Miss. 1986); and *Morea v. State*, 329 So.2d 527 (Miss. 1976).

AFFIRMED.

ROY NOBLE LEE, C.J., HAWKINS and DAN LEE, P.JJ., PRATHER, ROBERTSON, SULLIVAN, and ANDERSON JJ., CONCUR. PITTMAN, J., NOT PARTICIPATING.

Supreme Court of Mississippi
Linda Stone, Clerk
Third Floor Gartin Building
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P.O. Box 249
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April 8, 1992

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This is to advise you that the Mississippi Supreme Court rendered the following decisions on the 8th day of April, 1992.

Supreme Court Case #90-M-277

In Re: Joseph W. Bullock and Thomas J. Bullock

Joseph W. Bullock's Petition for Writ of Habeas Corpus Filed February 13, 1992, Treated as a Motion to Supplement the May 29, 1990, Joint Post-Conviction Application and, as Such, Granted.

Application of Joseph Bullock and Thomas Bullock for Post-Conviction Relief Denied as Being Procedurally Barred by the Doctrine of Res Judicata Pursuant to Miss. Code Ann. Section 99-39-21(3) (Supp. 1991).

Joseph Bullock's Application for Leave to Proceed in Trial Court With Motion to Correct Judgment Treated

as a Motion to Supplement the May 29, 1990, Joint Post-Conviction Application and, as Such, Granted.

Motion of Joseph Bullock and Thomas Bullock for Judgment on Application for Post-Conviction Relief Filed May 29, 1991, Denied.

Motion of Joseph Bullock and Thomas Bullock to File a Supplemental Brief and Attach to the Original Post-Conviction Application Granted.

Thomas Bullock's Petition for Writ of Habeas Corpus Filed September 27, 1990, Dismissed Without Prejudice.

Thomas Bullock's Petition for Writ of Habeas Corpus Filed October 17, 1991, Treated as a Motion to Supplement the May 29, 1990, Joint Post-Conviction Application and, as Such, Granted.

Thomas Bullock's Application to Proceed in the Trial Court Treated as a Motion to Supplement the May 29, 1990, Joint Post-Conviction Application and, as Such, Granted.

Linda Stone
Supreme Court Clerk

lp

ccs: DA Frank Carlton
DA Dale Harkey

ref copy: Earl L. Koskela

IN THE SUPREME COURT OF MISSISSIPPI

No. 1999-M-01613

JOSEPH W. BULLOCK — Petitioner

v.

STATE OF MISSISSIPPI — Respondent

ORDER

(Filed April 21, 2000)

This matter came before a panel of this Court consisting of Banks, P.J., McRae and Waller, JJ., on the petition for post-conviction relief filed by Joseph W. Bullock. Bullock alleges that his constitutional rights have been violated based upon the prosecutor's use of the "send a message" arguments at his trial, other prosecutorial misconduct during closing argument, lack of a complete trial transcript on direct appeal, and ineffective assistance of counsel at trial and on direct appeal. After due consideration, the panel finds that Bullock's petition is time barred and barred as a successive writ. Miss. Code Ann. §§ 99-39-5(2) and 99-39-27(9) (Supp. 1999). With the exception of the "send a message" issue, all of Bullock's claims are also barred by the doctrine of res judicata, and with the exception of his ineffective assistance of counsel claim, they are procedurally barred as having been capable of determination on direct appeal. Miss. Code Ann. § 99-39-21(1) and (3) (1994). Moreover, the panel finds that each of Bullock's claims is without merit, and that Bullock's petition should therefore be denied.

IT IS THEREFORE ORDERED that the petition for post-conviction relief filed by Joseph W. Bullock be and the same is hereby denied.

SO ORDERED, this the 20th day of April, 2000.

/s/ Fred L. Banks, Jr.
FRED L. BANKS, JR.,
PRESIDING JUSTICE

Serial: 93478

IN THE SUPREME COURT OF MISSISSIPPI

No. 2000-M-01276

THOMAS J. BULLOCK AND
JOSEPH WAYNE BULLOCK

v.

STATE OF MISSISSIPPI

ORDER

(Filed March 11, 2002)

This matter came before a panel of this Court consisting of Pittman, C.J., Cobb and Diaz, JJ., on the Petition for a Writ of Habeas Corpus filed by Thomas J. Bullock and the Motion to Substitute Party and Motion to Proceed In Forma Pauperis filed by Joseph Wayne Bullock. Thomas J. Bullock's Petition asks for post-conviction relief. Thomas J. Bullock died after filing his Petition in this Court. After due consideration the panel finds that the Petition for a Writ of Habeas Corpus should be dismissed as moot. *See Gollott v. State*, 646 So.2d 1297 (Miss. 1994).

After Thomas's death Joseph Wayne Bullock, Thomas's brother, filed a Motion to Substitute Party, asking that he be granted the post-conviction relief his late brother requested in the Petition for a Writ of Habeas Corpus. After due consideration the panel finds that the Motion to Substitute Party is not well taken and should be denied. The panel further finds that the Motion to Proceed In Forma Pauperis filed by Joseph Wayne Bullock should be dismissed as moot.

IT IS THEREFORE ORDERED that the Petition for a Writ of Habeas Corpus filed by Thomas Bullock be and the same is hereby dismissed as moot.

IT IS FURTHER ORDERED that the Motion to Substitute Party filed by Joseph Wayne Bullock be and the same is hereby denied.

IT IS FURTHER ORDERED that the Motion to Proceed In Forma Pauperis filed by Joseph Wayne Bullock be and the same is hereby dismissed as moot.

SO ORDERED, this the 11th day of March, 2002.

/s/ Edwin Lloyd Pittman
EDWIN LLOYD PITTMAN,
CHIEF JUSTICE

§ 97-17-41. Larceny – grand larceny defined – penalty.

Every person who shall be convicted of taking and carrying away, feloniously, the personal property of another, of the value of one hundred dollars ($100.00) or more, shall be guilty of grand larceny, and shall be imprisoned in the penitentiary for a term not exceeding five (5) years; or shall be fined not more than one thousand dollars ($1,000.00), or both.

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§ 97-3-65 Forcible rape.

* * *

(2) Every person who shall forcibly ravish any female of the age of twelve (12) years or upward, or who shall have been convicted of having carnal knowledge of any female above the age of twelve (12) years without her consent, by administering to her any substance or liquid which shall produce such stupor or such imbecility of mind or weakness of body as to prevent effectual resistance, upon conviction shall be imprisoned for life in the state penitentiary if the jury by its verdict so prescribes; and in cases where the jury fails to fix the penalty at life imprisonment the court shall fix the penalty at imprisonment in the state penitentiary for any term as the court, in its discretion, may determine.

(3) All earned time shall be forfeited by the inmate in the event of escape and/or aiding and abetting an escape. The commissioner may restore all or part of the

earned time if the escapee returns to the institution voluntarily, without expense to the state, and without act of violence while a fugitive from the facility.

(4) Any officer or employee who shall willfully violate the provisions of this section and be convicted therefor shall be removed from office or employment.

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§ 47-7-3. Parole of prisoners; conditions.

Every prisoner who has been or may hereafter be convicted of any offense against the state of Mississippi and is confined in the execution of a judgment of such conviction in the Mississippi State Penitentiary for a definite term or terms of one (1) year or over, or for the term of his or her natural life, whose record of conduct shows that such prisoner has observed the rules of the penitentiary, and who has served not less than one-third (1/3) of the total of such term or terms for which such prisoner was sentenced, or, if sentenced to serve a term or terms of thirty (30) years or more, or, if sentenced for the term of the natural life of such prisoner, has served not less than ten (10) years of such life sentence, may be released on parole as hereinafter provided, except that:

(a) No prisoner whose record shows him to be a confirmed and habitual criminal shall be eligible for parole;

(b) Any person who shall have been convicted of a sex crime and is otherwise eligible for parole shall not be released on parole until after

he has been examined by a competent psychiatrist selected by the state probation and parole board and found to be of normal and sound mind;

(c) No one shall be eligible for parole until he shall have served one (1) year of his sentence;

(d) No person shall be eligible for parole who shall on or after January 1, 1977, be convicted of robbery or attempted robbery through the display of a firearm until he shall have served ten (10) years if sentenced to a term or terms of more than ten (10) years or if sentenced for the term of the natural life of such person. If such person is sentenced to a term or terms of ten (10) years or less, then such person shall not be eligible for parole.

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§ 47-5-139. Certain inmates ineligible for earned time allowance; commutation to be based on total term of sentences; forfeiture of earned time in event of escape.

(1) An inmate shall not be eligible for the earned time allowance if:

(a) The inmate was sentenced to life imprisonment; but an inmate, except an inmate sentenced to life imprisonment for capital murder, who has reached the age of sixty-five (65) or older and who has served at least fifteen (15) years may petition the sentencing court for conditional release;

(b) The inmate was convicted as a habitual offender under Sections 99-19-81 through 99-19-87;

(c) The inmate has forfeited his earned time allowance by order of the commissioner;

(d) The inmate was convicted of a sex crime; or

(e) The inmate has not served the mandatory time required for parole eligibility for a conviction of robbery or attempted robbery with a deadly weapon.

(2) An offender under two (2) or more consecutive sentences shall be allowed commutation based upon the total term of the sentences.